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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,695	03/29/2004	Mark James Kline	9595	1368

27752 7590 05/14/2010
THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
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CINCINNATI, OH 45202

EXAMINER	
HAND, MELANIE JO	

ART UNIT	PAPER NUMBER
3761	

MAIL DATE	DELIVERY MODE
05/14/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/811,695	KLINE ET AL.	
	Examiner	Art Unit	
	MELANIE J. HAND	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 April 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-40* is/are pending in the application.

4a) Of the above claim(s) *24,28,34,37 and 38* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-23,25-27,29-33,35,36,39 and 40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 26, 2010 has been entered.

Response to Arguments

2. Applicant's arguments filed April 26, 2010 have been fully considered but they are not persuasive. As to the argument that Lodge does not disclose an intermediate stretch region disposed primarily in the back waist region, the applicant is referred to Fig. 17 of Lodge wherein the embodiment depicted has an elongate zone 52 that is triangular with a greater portion of the area of the triangle residing in the back waist region, thus it is the examiner's position that the intermediate stretch region is disposed primarily in the back waist region. As to the argument that Buell does not disclose a first side ear stretch region having a first side ear stretch region having a first tensile modulus greater than or about equal to the intermediate tensile modulus, both the embodiments of Fig. 1 and Fig. 6 contain structural elements, positioning patches 50 (Fig. 1) or 650 (Fig. 6) that are intended to impart additional stiffness to side panels 70. (Col. 51, line 65 - Col. 52, line 11) When the patches abut the elastomeric member 76 in the intermediate stretch region, the result is that the side panels, though they may contain an elasticized material, will necessarily have a higher tensile modulus than the intermediate region. Further, it is the examiner's position that zero-strain stretch laminates, because the base material is not by

nature elastic, do not impart an elasticity comparable to the elastomeric material in the intermediate stretch member.

3. Applicant's arguments with regard to dependent claims 23, 27 and 33 have been fully considered but are not persuasive, as applicant's arguments depend entirely on arguments regarding the rejection of claim 21 under 35 U.S.C. 102 over Lodge, which have been addressed *supra*.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 21, 22, 25, 26, 29, 31, 32, 35, 36 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Lodge (WO 97/47264 A1).

With respect to **claim 21:** Lodge discloses a front-fastenable disposable wearable absorbent article, diaper 40, comprising the following: a longitudinal axis; and a back waist region 74 that includes: a first side ear on a first side of the longitudinal axis; a second side ear on a second side of the longitudinal axis; and an intermediate stretch region, elongated zone 52, disposed primarily in the back waist region 74 (inasmuch as the zone is triangular and the majority of the area of the triangle is disposed in the back waist region) between the side ears and necessarily having an intermediate lateral tensile modulus; wherein the first side ear includes a first fastener and a first side ear stretch region having a first side ear lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus. (Fig. 17, Page 21, lines 13-30)

With respect to **claim 22:** The first side ear lateral tensile modulus is greater than the

intermediate lateral tensile modulus. Both the first side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the first side ear that does not have such incrementally stretched zones or materials, i.e. the first side ear has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 25:** The second side ear lateral tensile modulus disclosed by Lodge is greater than the intermediate lateral tensile modulus. Both the second side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the second side ear that does not have such incrementally stretched zones or materials, i.e. the second side ear has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 26:** Lodge discloses a first side ear lateral tensile modulus and a second side ear lateral tensile modulus that are each greater than the intermediate lateral tensile modulus for reasons stated *supra* with respect to claims 22 and 25.

With respect to **claim 29:** The intermediate stretch region 52 contains a formed substrate 80 that is included in a backsheet of the article inasmuch as it is simply an incrementally stretched portion of backsheet 26. (Page 11, lines 15-19, Page 12, lines 25-29)

With respect to **claim 31:** Lodge discloses a pant-type disposable wearable absorbent article, diaper 40, comprising the following: a longitudinal axis; and a first side panel on a first side of the longitudinal axis; a second side panel on a second side of the longitudinal axis; and an intermediate stretch region, elongated zone 52, disposed primarily in a back waist region 74 (inasmuch as the zone is triangular and the majority of the area of the triangle is disposed in the back waist region) between the side panels and necessarily having an intermediate lateral tensile modulus; wherein the first side panel includes a first side panel stretch region having a first side panel lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus. Both the first side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the first side ear that does not have such incrementally stretched zones or materials, i.e. the first side ear has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 32:** The first side panel lateral tensile modulus disclosed by Lodge is greater than the intermediate lateral tensile modulus. Both the first side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the first side ear that does not have such incrementally stretched zones or materials, i.e. the first side panel has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 35:** The second side ear lateral tensile modulus disclosed by Lodge is

greater than the intermediate lateral tensile modulus. Both the second side ear and intermediate region are defined by the backsheet, however the intermediate region 52 has incrementally stretched regions 54 which are more readily elongated as a result of the incremental stretching process and therefore by their nature has a tensile modulus less than the second side ear that does not have such incrementally stretched zones or materials, i.e. the second side ear has a tensile modulus greater than the intermediate region tensile modulus.

With respect to **claim 36:** Lodge discloses a first side ear lateral tensile modulus and a second side ear lateral tensile modulus that are each greater than the intermediate lateral tensile modulus for reasons stated *supra* with respect to claims 32 and 35.

With respect to **claim 39:** The intermediate stretch region 52 contains a formed substrate 80 that is included in a backsheet of the article inasmuch as it is simply an incrementally stretched portion of backsheet 26. (Page 11, lines 15-19, Page 12, lines 25-29)

6. Claims 21, 29, 30, 31, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Buell et al (U.S. Patent No. 5,221,274).

With respect to **claim 21:** Buell discloses a front-fastenable disposable wearable absorbent article 20, comprising: a longitudinal axis; and a back waist region 58 that includes: a first side ear on a first side of the longitudinal axis; a second side ear on a second side of the longitudinal axis; and an intermediate stretch region, namely an elastic waist feature 34 including elastomeric member 76, disposed primarily in the back waist region 58 between the side ears 70 and necessarily having an intermediate lateral tensile modulus; wherein the first side ear

includes a first fastener and a first side ear stretch region having a first side ear lateral tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus. Examiner's position is based upon Buell's disclosure that the elastic waist feature contains both the backsheet material and an elastomeric material 76 whereas the first side ear contains only the backsheet and topsheet materials and a positioning patch 50 or 650 that imparts additional stiffness to reduce folding during wear. ('274, Col. 51, line 65 - Col. 52, line 11) An elastomeric material by its nature has a lower tensile modulus than a non-elastomeric material, thus the first side ear, together with the stiffness-imparting positioning patch 50/650 necessarily has a higher tensile modulus than the intermediate region.

With respect to **claim 29:** The intermediate stretch region 34 disclosed by Buell is included in a backsheet of the article inasmuch as it is attached thereto.

With respect to **claim 30:** Buell discloses that an elastomeric element is attached to the backsheet in the intermediate stretch region 34.

With respect to **claim 31:** Buell discloses a front-fastenable disposable wearable absorbent article 20, comprising: a longitudinal axis; a first side panel 70 on a first side of the longitudinal axis; a second side panel 70 on a second side of the longitudinal axis; and an intermediate stretch region, namely an elastic waist feature, disposed in a back waist region 58 between the side panels and necessarily having an intermediate lateral tensile modulus; wherein the first side ear includes a first fastener and a first side panel stretch region having a first side panel tensile modulus that is greater than or about equal to the intermediate lateral tensile modulus. Examiner's position is based upon Buell's disclosure that the elastic waist feature contains both

the backsheet material and an elastomeric material 76 whereas the first side ear contains only the backsheet and topsheet materials and a positioning patch 50 or 650 that imparts additional stiffness to reduce folding during wear. ('274, Col. 51, line 65 - Col. 52, line 11) An elastomeric material by its nature has a lower tensile modulus than a non-elastomeric material, thus the first side ear, together with the stiffness-imparting positioning patch 50/650 necessarily has a higher tensile modulus than the intermediate region.

With respect to **claim 39:** The intermediate stretch region 34 disclosed by Buell is included in a backsheet of the article inasmuch as it is attached thereto.

With respect to **claim 40:** Buell discloses that an elastomeric element is attached to the backsheet in the intermediate stretch region 34.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 23, 27 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lodge (WO 97/47264 A1).

With respect to **claim 23:** Examiner is interpreting "about equal" in a manner consistent with the specification as that term is understood from the specification, i.e. the difference is between greater than 0 and 5% (Specification, page 23, paragraph 3) The first side ear lateral tensile modulus is about equal to the intermediate lateral tensile modulus. Lodge discloses that the intermediate zone is simply the backsheet 26 incrementally stretched in only the intermediate region to define a formed substrate 80. Lodge does not explicitly disclose a first side ear tensile modulus about equal to the intermediate region tensile modulus. However it is examiner's position that the incremental stretching process would produce a tensile modulus that is about equal to that of the rest of the backsheet as that term is understood because the process only produces elastic-like behavior by elongating the substrate rather than replacing the material with a genuinely elastic material, thus the difference in tensile moduli between the first side ear and intermediate region would fall in the range used herein when interpreting "about equal". Therefore it would be obvious to one of ordinary skill in the art to modify the article of Lodge such that the incremental stretching process yields a first side ear tensile modulus that is about equal to the intermediate region tensile modulus with a reasonable expectation of success, which would ensure a more uniform response to stretching during wear.

With respect to **claim 27:** Examiner is interpreting "about equal" in a manner consistent with the specification as that term is understood from the specification, i.e. the difference is between greater than 0 and 5% (Specification, page 23, paragraph 3) The first and second side ear lateral tensile moduli are each about equal to the intermediate lateral tensile modulus. Lodge

discloses that the intermediate zone is simply the backsheet 26 incrementally stretched in only the intermediate region to define a formed substrate 80. Lodge does not explicitly disclose a first or second side ear tensile modulus about equal to the intermediate region tensile modulus. However it is examiner's position that the incremental stretching process would produce a tensile modulus that is about equal to that of the rest of the backsheet as that term is understood because the process only produces elastic-like behavior by elongating the substrate rather than replacing the material with a genuinely elastic material. Thus the difference in tensile moduli between the first or second side ear and intermediate region would fall in the range used herein when interpreting "about equal". Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Lodge such that the incremental stretching process yields first and second side ear tensile moduli that are each about equal to the intermediate region tensile modulus with a reasonable expectation of success, which would ensure a more uniform response to stretching during wear.

With respect to **claim 33:** Examiner is interpreting "about equal" in a manner consistent with the specification as that term is understood from the specification, i.e. the difference is between greater than 0 and 5% (Specification, page 23, paragraph 3) The first side panel lateral tensile modulus is about equal to the intermediate lateral tensile modulus. Lodge discloses that the intermediate zone is simply the backsheet 26 incrementally stretched in only the intermediate region to define a formed substrate 80. Lodge does not explicitly disclose a first side ear tensile modulus about equal to the intermediate region tensile modulus. However it is examiner's position that the incremental stretching process would produce a tensile modulus that is about equal to that of the rest of the backsheet as that term is understood because the process only produces elastic-like behavior by elongating the substrate rather than replacing the material with

a genuinely elastic material, thus the difference in tensile moduli between the first side ear and intermediate region would fall in the range used herein when interpreting "about equal". Therefore it would be obvious to one of ordinary skill in the art to modify the article of Lodge such that the incremental stretching process yields a first side ear tensile modulus that is about equal to the intermediate region tensile modulus with a reasonable expectation of success, which would ensure a more uniform response to stretching during wear.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761